

Amendment No. 1 to HB0177

Sargent
Signature of Sponsor

AMEND Senate Bill No. 183*

House Bill No. 177

by deleting all of the language after the enacting clause and by substituting instead the following:

SECTION 1. This act shall be known and may be cited as the "Uniformity and Small Business Relief Act of 2013."

SECTION 2. Tennessee Code Annotated, Section 67-4-703(a), is amended by deleting the first two sentences and by substituting instead the following language:

The commissioner is authorized to collect and administer the taxes levied by this part.

and is further amended by deleting from subsection (c) the language "July 1, 2009, through October 1, 2010," and by substituting instead the language "July 1, 2013, through December 31, 2014,".

SECTION 3. Tennessee Code Annotated, Title 67, Chapter 4, Part 7, is amended by deleting Section 67-4-704 in its entirety and by substituting instead the following:

67-4-704. Except as otherwise provided in § 67-4-710, the making of sales by engaging in any vocation, occupation, business, or business activity enumerated, described, or referred to in § 67-4-708(1)-(5) is declared to be a privilege upon which a state tax is levied at the rates fixed and provided in § 67-4-709.

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SECTION 4. Tennessee Code Annotated, Title 67, Chapter 4, Part 7, is amended by deleting Section 67-4-705 in its entirety and by substituting instead the following:

67-4-705.

(a) The making of sales by engaging in any vocation, occupation, business, or business activity enumerated, described, or referred to in § 67-4-708(1)-(4) is declared to be a privilege upon which each incorporated municipality in which the vocation, occupation, business, or business activity is carried on, by ordinance of its governing body, may levy a privilege tax at the rates fixed and provided in § 67-4-709. The tax imposed by this subsection shall be collected by the commissioner in the same manner as the tax imposed by § 67-4-704.

(b) Notwithstanding subsection (a) or any other provision to the contrary, every incorporated municipality levying such tax as of the effective date of this act, shall be deemed to have made an effective election to continue the imposition of such tax at the same rate that was in effect on such date and shall not be required to pass any additional ordinance. Any incorporated municipality that elects after the effective date of this act, to levy the tax authorized by this section, or elects to change the rate of tax imposed by the municipality, must levy such tax at the rates fixed and provided in § 67-4-709. Every municipality that levies

the tax described in subsection (a) is authorized to repeal such tax by ordinance of its governing body.

(c) The making of sales by engaging in any vocation, occupation, business, or business activity enumerated, described, or referred to in § 67-4-710 is declared to be a privilege upon which each county or incorporated municipality, or both, in which the business, business activity, vocation, or occupation is carried on, by ordinance of its governing body, may levy a privilege tax at the rates fixed and provided in § 67-4-710.

SECTION 5. Tennessee Code Annotated, Section 67-4-706, is amended by deleting subsection (a) in its entirety and by substituting instead the following:

(a) For purposes of filing the returns required by § 67-4-715 and paying the taxes levied by §§ 67-4-704 and 67-4-705, every person taxable under §§ 67-4-704 and 67-4-705 shall, prior to engaging in business as defined in § 67-4-702, register with the commissioner or the county clerk, in the case of businesses located within the county, and with the commissioner or the appropriate city official, in the case of businesses located within the incorporated municipality. Any person that is subject to the tax levied by § 67-4-704 but has no established physical location, outlet, or other place of business in the state shall register with the commissioner for purposes of this section.

and is further amended by deleting from subsection (c) the language “taxable under §§ 67-4-705 and 67-4-709(5)” and by substituting instead the language “described in § 67-4-708(5) and taxable under § 67-4-709(5)”.

SECTION 6. Tennessee Code Annotated, Section 67-4-707, is amended by designating the current language as subsection (a) and by adding the following language as subsection (b):

(b) Notwithstanding subsection (a), any county or municipality may, but shall not be required to, enter an agreement with the commissioner pursuant to which the bond or escrow account required by subsection (a) will be filed with the commissioner rather than the county or municipality.

SECTION 7. Tennessee Code Annotated, Section 67-4-708(1), is amended by deleting from subdivision (B) the language “gasoline and diesel fuel sold at wholesale;” and by adding the following language as a new subdivision (E):

(E) Gasoline and diesel fuel sold at wholesale;

SECTION 8. Tennessee Code Annotated, Section 67-4-709, is amended by deleting the following language:

For the exercise of the privileges described or enumerated in § 67-4-708, persons shall pay a tax, according to the dominant business activity of the persons as follows:

and by substituting instead the following language:

For the exercise of the privileges described, enumerated, or referred to in § 67-4-708, every person shall pay the taxes imposed by §§ 67-4-704 and 67-4-705 according to the dominant business activity of the person as follows:

SECTION 9. Tennessee Code Annotated, Section 67-4-709(1), is amended by adding the following language as a new subdivision (E):

(E) One thirty second of one percent (1/32 of 1%) of all sales by a wholesaler classified under § 67-4-708(1)(E);

SECTION 10. Tennessee Code Annotated, Section 67-4-710(a), is amended by deleting the following language:

For the exercise of the privileges described or enumerated in this section, persons shall pay a fee directly to the county clerk, in the case of

activities carried on within the county, and to the city official designated as the collector of tax by city charter or ordinance, in the case of activities carried on within the municipality:

and by substituting instead the following language:

Any county, by resolution of its county legislative body, or any incorporated municipality, by ordinance of its governing body, is authorized to impose a fee on the exercise of the privileges described or enumerated in this section. Notwithstanding any provision to the contrary, every county and incorporated municipality imposing the fee provided by this section as of the effective date of this act, shall be deemed to have made an effective election to continue the imposition of such fee and shall not be required to pass any additional resolution or ordinance. Persons exercising such privileges shall pay the applicable fee directly to the county clerk, in the case of activities carried on within the county, and to the city official designated as the collector of tax by city charter or ordinance, in the case of activities carried on within the municipality:

SECTION 11. Tennessee Code Annotated, Section 67-4-710, is amended by deleting subsection (b) in its entirety.

SECTION 12. Tennessee Code Annotated, Section 67-4-711(a), is amended by deleting subdivision (6) in its entirety and by substituting instead the following:

(6) Sales of services that are received by customers located outside the state;

SECTION 13. Tennessee Code Annotated, Section 67-4-712, is amended by deleting subsection (d) in its entirety and by substituting instead the following:

(d)

(1) Any person having sales of less than ten thousand dollars (\$10,000) within a county shall be exempt from the tax and licensing provisions in §§ 67-4-704 and 67-4-723(a) with respect to the sales sourced to that county as provided in § 67-4-717(b).

(2) Any person having sales of less than ten thousand dollars (\$10,000) within an incorporated municipality shall be exempt from the tax and licensing provisions in §§ 67-4-705 and 67-4-723(a) with respect to the sales sourced to that municipality as provided in § 67-4-717(c).

(3) Any person subject to the tax imposed by this chapter due to the operation of § 67-4-717(a) and having sales of less than ten thousand dollars (\$10,000) within a county shall be exempt from the taxing provision in § 67-4-704 with respect to the sales occurring in that county.

and is further amended by adding the following as a new subsection (g):

(g) Notwithstanding any provision to the contrary, this part shall not apply to providers of direct-to-home satellite television programming services for any tax year that begins on or before July 1, 2014.

SECTION 14. Tennessee Code Annotated, Section 67-4-713(a)(2)(A), is amended by deleting the language "levied the tax under this part" and by substituting instead the language "receives the allocation of tax under § 67-4-724".

SECTION 15. Tennessee Code Annotated, Section 67-4-713(a)(2), is amended by adding the following as a new subdivision (D):

(D) Notwithstanding subdivision (a)(2)(A), providers of video programming services, as defined in § 67-6-102, and providers of direct-to-home satellite television programming services, shall be allowed the credit provided by this subdivision (a)(2) to the extent that the property is located in a jurisdiction to

which the taxpayer's receipts are sourced in accordance with § 67-4-717 and the property is taxed by that jurisdiction;

SECTION 16. Tennessee Code Annotated, Section 67-4-714(a), is amended by inserting the language "per location" between the word "annum" and the word "after" in subdivision (1) and is further amended by inserting the following language between the first and second sentences of subdivision (1):

Any person subject to tax under this part that has no established physical location, outlet, or other place of business in the state shall be subject to a single minimum tax as provided in this subdivision for all activity within the state.

SECTION 17. Tennessee Code Annotated, Section 67-4-715, is amended by deleting from subsection (b) the language "taxes levied by the county" and by substituting instead the language "taxes levied by the state", and is further amended by deleting subsection (g) in its entirety and by substituting instead the following as a new subsection (g):

(g) Notwithstanding any provision of this section to the contrary, the commissioner is authorized to change the tax period established by this part to correspond to the taxpayer's fiscal year and change the due date of the associated tax return to a date that is not less than two (2) calendar months following the end of such tax period. Such change is authorized to occur no sooner than ninety (90) days after the commissioner has certified that a system is in place for the electronic submission of such returns. Such certification shall be accomplished by the commissioner prominently posting a notice on the department's web site. The commissioner shall allow the submission of a single, electronic filing that includes all of the information required by the commissioner to determine the amount of tax, if any, that is properly due under this part and

allocated to each jurisdiction. Nothing in this subsection (g) shall be construed to either increase or decrease the amount of tax otherwise due under the provisions of this part.

SECTION 18. Tennessee Code Annotated, Title 67, Chapter 4, Part 7, is amended by adding the following as a new section designated as Section 67-4-717:

67-4-717.

(a) Any person engaged in this state in any vocation, occupation, business, or business activity enumerated, described, or referred to in § 67-4-708(1)-(4) without establishing a physical location, outlet, or other place of business in the state shall be subject to the tax levied by § 67-4-704 and shall be exempt from the tax levied by § 67-4-705. For purposes of this section, the term “engaged in this state” shall be limited to the following activities:

(1) Performing any service in this state, to the extent such service is received by a customer located in the state;

(2) Leasing tangible personal property that is located in this state;

(3) Delivering tangible personal property to a buyer in this state, when delivered by the seller in the seller’s own vehicle; and

(4) Purchasing and subsequently selling tangible personal property in this state in a wholly in-state transaction, where the purchase and subsequent sale are accomplished through the presence in this state of the seller’s employees, agents, or independent contractors acting on behalf of the seller.

(b)

(1) For purposes of distributing the state business tax as provided in § 67-4-724(a), receipts from sales made by a person subject to the tax levied by § 67-4-704 shall be sourced to the county in which the person's established physical location, outlet, or other place of business is located. Receipts from sales made by persons operating from an established physical location, outlet, or other place of business in one county who extend their operations into other counties without establishing a physical location, outlet, or other place of business therein shall be sourced to the county in which the person's established physical location, outlet, or other place of business is located. If the person has no established physical location, outlet, or other place of business in the state, then such receipts shall be sourced to the state and the taxes shall be earmarked and allocated to the state's general fund in accordance with § 67-4-724(a)(5).

(2) Notwithstanding subdivision (b)(1), receipts from all taxable sales of any services or tangible personal property by a provider of video programming services, as defined in § 67-6-102, or a provider of direct-to-home satellite television programming services, shall be sourced to the county where the property or service is received by the customer, regardless of whether the provider has a physical location, outlet, or other place of business in that county.

(3) Notwithstanding subdivision (b)(1), compensation of more than fifty thousand dollars (\$50,000) from contracts performed in one county by a person described in § 67-4-

708(4)(A) shall be sourced to that county as provided in § 67-4-709(4)(A)(i) and the tax on such compensation shall be distributed to that county pursuant to § 67-4-724(a). Compensation of fifty thousand dollars (\$50,000) or less from contracts performed in one county by a person described in § 67-4-708(4)(A) shall be sourced to the county of such person's domicile or location. If such person does not have a domicile or location in the state, such compensation shall be earmarked and allocated to the state's general fund in accordance with § 67-4-724(a)(5).

(c)

(1) For purposes of levying the tax set forth in § 67-4-705, receipts from sales made by a person subject to the tax levied by § 67-4-705 shall be sourced to the incorporated municipality in which the person's established physical location, outlet, or other place of business is located and shall be subject to the tax, if any, that is levied by such incorporated municipality. Receipts from sales made by persons operating from an established physical location, outlet, or other place of business in one incorporated municipality who extend their operations outside the boundaries of the incorporated municipality that levied the tax without establishing a physical location, outlet, or other place of business outside such incorporated municipality shall be sourced to the incorporated municipality in which the person's established physical location, outlet, or other place of business is located and shall be subject to the tax, if any, that is levied by such incorporated municipality. If the person has no established

physical location, outlet, or other place of business in the state, then such receipts shall not be subject to tax under § 67-4-705.

(2) Notwithstanding subdivision (c)(1), receipts from all taxable sales of any services or tangible personal property by a provider of video programming services, as defined in § 67-6-102, shall be sourced to the incorporated municipality where the property or service is received by the customer, regardless of whether the provider has a physical location, outlet, or other place of business in that incorporated municipality.

(3) Notwithstanding subdivision (c)(1), compensation of more than fifty thousand dollars (\$50,000) from contracts performed in one incorporated municipality by a person described in § 67-4-708(4)(A) shall be sourced to that incorporated municipality as provided in § 67-4-709(4)(A)(i) and such compensation shall be subject to the tax, if any, that is levied by such incorporated municipality. Compensation of fifty thousand dollars (\$50,000) or less from contracts performed in one incorporated municipality by a person described in § 67-4-708(4)(A) shall be sourced to the incorporated municipality of such person's domicile or location; provided, if such person does not have a domicile or location in the state, such compensation shall not be subject to tax under § 67-4-705.

SECTION 19. Tennessee Code Annotated, Section 67-4-719, is amended by deleting the language "levied by a county" from the first sentence of the section and by substituting instead the language "levied by the state".

SECTION 20. Tennessee Code Annotated, Title 67, Chapter 4, Part 7, is amended by deleting Section 67-4-723 in its entirety and by substituting instead the following:

67-4-723.

(a)

(1) Upon receipt of the prescribed application and payment of fifteen dollars (\$15.00), together with any other information reasonably required, it shall be the duty of the county clerk, in the case of taxpayers located within the county, and the appropriate city official, in the case of taxpayers located within the incorporated municipality, to issue a license to the taxpayer. If a taxpayer has more than one location within the county or incorporated municipality, a separate license, including payment of the fifteen dollar (\$15.00) fee required by this subsection, shall be required for each location.

(2) In addition to the initial license issued under subdivision (a)(1), the issuing official shall renew the license upon notification from the department that the taxpayer has filed the return required under § 67-4-715 and remitted the amount shown to be due on the return. There shall be no fee charged for the renewal of a license issued under this subsection.

(3) Each license issued under this subsection shall expire thirty (30) days after the date that the taxpayer's return is due under § 67-4-715.

(4) No person shall conduct business in this state without first acquiring the license required by this subsection.

(5) Notwithstanding subdivisions (a)(1) and (2), any county or municipality may, but shall not be required to, enter an agreement with the commissioner pursuant to which the department will issue or renew, or both, the license required by this subsection on behalf of the county or municipality.

(b)

(1) Notwithstanding any provision to the contrary, any incorporated municipality that imposes the tax authorized by § 67-4-705(a) and every county shall issue a minimal activity license to any person that is exempt from taxation and licensing pursuant to § 67-4-712(d), provided that such person has sales of more than three thousand dollars (\$3,000) but less than ten thousand dollars (\$10,000) per year within the jurisdiction. Such license shall be issued upon receipt of an application, to be prescribed by the Department, and payment of fifteen dollars (\$15.00). The application shall require the applicant to attest that the applicant is engaged in business within such county or incorporated municipality but has sales of less than ten thousand dollars (\$10,000) per year within such county or incorporated municipality. No person with sales of more than three thousand dollars (\$3,000) but less than ten thousand dollars (\$10,000) per year within such county or incorporated municipality shall conduct business in such county or incorporated municipality without first acquiring the license required by this subsection. If a person has more than one location within the county or incorporated municipality, a separate minimal activity license, including

payment of the fifteen dollar (\$15.00) fee required by this subsection, shall be required for each location. Every county or incorporated municipality that issues minimal activity licenses pursuant to this subsection shall provide the Department, if requested, with the identity of each licensee and any other information reasonably required by the Department to verify the licensee's compliance with this part.

(2) Persons with sales of three thousand dollars (\$3,000) or less per year in any incorporated municipality or county may, but do not have to, apply for a minimal activity license, as provided for in this subsection (b).

(3) Each minimal activity license issued under this subsection shall expire thirty (30) days after the dates set forth in § 67-4-715 as if the person were filing a return.

(4) This subsection shall not operate to exempt any person from filing a tax return pursuant to § 67-4-715 in the event that the person's sales exceed ten thousand dollars (\$10,000) during their tax year as otherwise provided in § 67-4-715.

(5) Notwithstanding subdivision (b)(1), any county or municipality may, but shall not be required to, enter an agreement with the commissioner pursuant to which the department will issue or renew, or both, the license required by this subsection on behalf of the county or municipality.

(c) It shall be the duty of each taxpayer that receives a license under this section to exhibit such license.

(d) An amount equal to three dollars (\$3.00) per minimal activity license shall be retained by the county clerk or city official that issues such license. In the case of a county clerk, such amount shall be earmarked for computer hardware purchases or replacement but may be used for other usual and necessary computer-related expenses at the discretion of the county clerk. The amount shall be preserved for these purposes and shall not revert to the general fund at the end of a budget year if unexpended. Notwithstanding § 8-21-701, no additional fee shall be charged to any person for the filing of the application or issuance of the license provided for in this section.

(e) Licenses already in effect as of the effective date of this act continue to be valid until their original renewal date.

SECTION 21. Tennessee Code Annotated, Title 67, Chapter 4, Part 7, is amended by deleting Section 67-4-724 in its entirety and by substituting instead the following:

67-4-724.

(a) The tax levied by the state under § 67-4-704, including any associated interest and penalties, shall be distributed as follows:

(1) An amount equal to seven dollars (\$7.00) per return shall be paid to the county clerk with respect to each tax return filed under § 67-4-715 by a taxpayer that is either located within the county or otherwise obtains a license under § 67-4-723(a). Of that amount, three dollars (\$3.00) shall be earmarked for computer hardware purchases or replacement, but may be used for other usual and necessary computer-related expenses at the discretion of the county clerk. The amount shall be preserved for

these purposes and shall not revert to the general fund at the end of a budget year if unexpended.

(2) After the distribution provided in subdivision (a)(1), an amount equal to five percent (5%) of the remaining proceeds of the tax shall be paid to the county clerk in the case of returns filed under § 67-4-715 by taxpayers located or otherwise licensed under § 67-4-723(a) within the county.

(3) After the distributions provided in subdivisions (a)(1) and (2), forty-three percent (43%) of the remaining proceeds of the tax shall be earmarked and allocated specifically and exclusively to the state's general fund.

(4) After the distributions provided in subdivisions (a)(1)-(3), an administration fee of one and one hundred twenty-five thousandths percent (1.125%) of the remaining proceeds of the tax shall be allocated to the department to cover the expenses of administration and collection.

(5) After the distributions provided in subdivisions (a)(1)-(4), the remaining proceeds of the tax collected under § 67-4-704 shall be distributed to the county in which the taxpayer has established a physical location, outlet, or other place of business from which the sales are made.

(b) The tax levied by an incorporated municipality under § 67-4-705, including any associated interest and penalties, shall be distributed as follows:

(1) An amount equal to seven dollars (\$7.00) per return shall be paid to the appropriate city official with respect to each tax

return filed under § 67-4-715 by a taxpayer that is either located within the municipality or otherwise obtains a license under § 67-4-723(a).

(2) After the distribution provided in subdivision (b)(1), an amount equal to five percent (5%) of the remaining proceeds of the tax shall be paid to the appropriate city official in the case of returns filed under § 67-4-715 by taxpayers located or otherwise licensed under § 67-4-723(a) within the municipality.

(3) After the distributions provided in subdivisions (b)(1) and (2), forty-three percent (43%) of the remaining proceeds of the tax shall be earmarked and allocated specifically to a fund held by the state to be used for purposes of the municipality that levied the tax. The fund shall be preserved for these purposes and shall not revert to the general fund at the end of a budget year if unexpended.

(4) After the distributions provided in subdivisions (b)(1)-(3), an administration fee of one and one hundred twenty-five thousandths percent (1.125%) of the remaining proceeds of the tax shall be allocated to the department to cover the expenses of administration and collection.

(5) After the distributions provided in subdivisions (b)(1)-(4), the remaining proceeds of the tax collected by the commissioner under § 67-4-705 shall be distributed to the municipality that levied the tax.

(c) Notwithstanding subsections (a) and (b), one hundred percent (100%) of the tax, interest, and penalty collected from a taxpayer that

does not have either a license under § 67-4-723(a) or an established physical location, outlet, or other place of business in any county or incorporated municipality in the state shall be earmarked and allocated specifically and exclusively to the state's general fund. In addition, one hundred percent (100%) of the amount of any tax, interest, and penalty assessed by the commissioner pursuant to § 67-4-704 as a result of an audit of the taxpayer's books and records shall be earmarked and allocated specifically and exclusively to the state's general fund.

(d) The fee levied by a county or incorporated municipality under § 67-4-710, including any associated interest and penalties, shall be retained by the county or incorporated municipality that levied the fee. Notwithstanding the preceding sentence, an amount equal to five percent (5%) of the proceeds of the fee shall be paid to the county clerk, in the case of fees collected under § 67-4-710 by a county, and to the appropriate city official, in the case of fees collected under § 67-4-710 by a municipality.

SECTION 22. Tennessee Code Annotated, Title 67, Chapter 4, Part 7, is amended by deleting Section 67-4-725 in its entirety.

SECTION 23. This Act shall take effect on January 1, 2014, the public welfare requiring it, and shall apply to tax periods that begin on or after such date.